IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12627 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMARABHAI @ SAMARSINGH VIRSINGH MOHANIYA

Versus

DIST MAGISTRATE

Appearance:
Ms. Krishna U Mishra for Petitioner
Mr S P Dave, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/04/2001

ORAL JUDGEMENT

The petitioner above named, has preferred this petition under Article 226 of the Constitution of India, challenging the order passed by the District Magistrate, Dahod, on 5.8.2000 detaining the present petitioner as

"dangerous person" under the provisions made in Section 3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, 'the Act').

2. The case of the respondent against the petitioner is that the petitioner was found to be a dangerous person within the meaning of Section 3(2) of the Act and, therefore, his activities were detrimental and prejudicial to the maintenance of the public order and, therefore, he being a dangerous person, was required to be detained in terms of the orders passed and referred to hereinabove. The petitioner has challenged the aforesaid order of his detention dated 5.8.2000 recorded by the first respondent on several grounds. However, it has been mainly contended that the bunch of papers supplied to him contained so many documents in English language. That the petitioner did not and does not know English language and, therefore, he had submitted an application to the District Magistrate on 29.11.2000 placed at page 142 requesting the Detaining Authority to supply Gujarati version of those documents shown at pages 18, 19, 70 to 77, 103 and 104. The petitioner's contention is that despite his request, the translated versions were not supplied to him. It is also contended that certain documents were not legible. It is further contended that the Detaining Authority himself has not verified the statements of witnesses. On the aforesaid grounds, it is contended that the order of detention passed by the Detaining Authority is therefore, illegal and deserves to be quashed and set aside. The petitioner, therefore, prays that the order of detention of the petitioner passed by the District Magistrate, Dahod on 5.8.2000 be quashed and set aside and the petitioner-detenu be set at liberty forthwith.

3. On receiving the petition, rule was issued and Mr S P Dave, learned AGP appears on behalf of all the respondents and waives service. I have heard the learned Advocates for the parties and have perused the papers.

4. Now it is very clear that the statements of witnesses submitted to the Detaining Authority are required to be verified by the Detaining Authority himself. In the present case, the detention order has been passed by the District Magistrate, Dahod on 5.8.2001. The order has been placed at page 16. Therefore, it was the duty of the District Magistrate i.e. respondent no.1 herein himself to verify the statements of witnesses submitted to him. Considering the papers, it is very clear that the documents have been verified by the Sub-Divisional Magistrate and not by the

Detaining Authority . In that view of the matter, when the statements of witnesses have not been verified personally by the Detaining Authority himself, then in that event, in my opinion, the order of detention cannot be sustained.

5. In view of the above, learned Advocate for the petitioner does not press the other grounds. In that view of the matter, the impugned order of detention passed against the petitioner and placed at page 16 cannot be sustained, in view of the fact that the mandatory provisions have not been complied with. It is more so when the names of the witnesses, who have been relied upon for passing detention orders, have been kept away from the notice and knowledge of the petitioner under section 9(2) of the Act. Therefore, though privilege under section 9(2) has been claimed, personal verification was a must.

6. In view of the aforesaid, this petition is required to be allowed and is accordingly allowed. The impugned detention order passed by the District Magistrate, Dahod dated 5.8.2000 against the respondent is quashed and set aside. The detenu is ordered to be set at liberty, if not required in any other case. Rule is made absolute. Direct Service is permitted.

20.4.2001 [D P Buch, J.]

msp